

### REMARKS

This Response is submitted in reply to the Final Office Action dated June 8, 2009. Claims 1 to 30 are pending in the present application. Claims 1, 8, 12, 18, 25, 29 and 30 are hereby amended. Claims 7, 17 and 24 are hereby canceled without prejudice or disclaimer. Claims 1, 8, 12, 18, 25, 29 and 30 are in independent form. Please charge Deposit Account No. 02-1818 for all payments due in connection with this Response.

Applicant refers to previously presented Claims 1 to 30 in the Response to Office Action dated March 19, 2009 as "Prior Claims".

The Office Action rejected:

- (a) Prior Claims 1 to 6, 8 to 16, 18 to 23 and 25 to 30 under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent No. 7,203,147 to Kawakami et al. ("Kawakami"); and
- (b) Prior Claims 7, 17 and 24 under 35 U.S.C. § 103(a) as being unpatentable over Kawakami in view of U.S. Patent No. 5,986,987 to Taguchi et al. ("Taguchi").

As previously noted in the Response to Office Action dated March 19, 2009, Applicant believes that the Office Action meant to apply the Kawakami reference under 35 U.S.C. §102(e) rather than under 35 U.S.C. §102(a). In light of the amendments made herein, Applicant respectfully disagrees with these rejections.

Page 9 of the Office Action states, with emphasis added:

As to claims 7, 17 and 24, Kawakami is deficient in disclosing the information recording processing device, recording medium, and recording processing method, wherein said modulated data generating unit performs a modulated recording frame generating process including a process of conversion of two-bit information into three-bit information.

Applicant has rewritten Prior Claim 7 as currently amended independent Claim 1. Accordingly, amended independent Claim 1 includes, among other elements, "a modulated data generating unit for generating a modulated recording frame by performing data modulation processing on data to be recorded, wherein said modulated data generating unit performs a modulated recording frame generating process including a process of conversion of two-bit information into three-bit information . . . ."

Applicant has elected, without prejudice, to disqualify Kawakami from being used in such rejection in accordance with 35 U.S.C. §103(c). 35 U.S.C. §103(c) sets forth the following:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Applicant is entitled to disqualify Kawakami under 35 U.S.C. §103(c) for the following reasons:

- (a) The claimed subject matter of the present application was developed by inventors Tsutomu Ichinose, Shunsuke Furukawa and Takuya Wada. The subject matter of Kawakami was developed by another person, specifically, inventors Takashi Kawakami, Toshihide Ooba and Katsuyuki Koizumi;
- (b) Kawakami qualifies as prior art only under 35 U.S.C. §102(e). Specifically, Kawakami was filed on April 1, 2003. The present application claims the benefit of Japanese Patent Application No. 2003-319591 filed on September 11, 2003. Thus, Kawakami is only prior art to the present application under 35 U.S.C. § 102(e); and
- (c) The present application and Kawakami were, at the time the invention of the present application was made, owned by Sony.

Accordingly, Applicant submits that Kawakami is disqualified as prior art pursuant §103(c). With Kawakami being disqualified, Applicant submits that Taguchi does not anticipate the claimed subject matter of amended independent Claim 1. Accordingly, for at least these reasons, Applicant respectfully submits that amended independent Claims 1 is patentably distinguished over the art cited of record and in condition for allowance. Dependent Claims 2 to 7 depend directly from amended independent Claim 1 and are also allowable for the reasons given with respect to Claim 1 and because of the additional features recited in these claims.

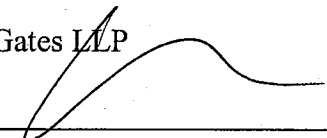
Independent Claims 8, 12, 18, 25, 29 and 30 each include certain similar elements to independent Claim 1. For reasons similar to those discussed above with respect to independent Claim 1, independent Claims 8, 12, 18, 25, 29 and 30 (and the claims that depend therefrom) are each patentably distinguished over the art cited of record and in condition for allowance.

An earnest endeavor has been made to place this application in condition for formal allowance, and allowance is courteously solicited. If the Examiner has any questions regarding this Response, Applicant respectfully requests that the Examiner contact the undersigned.

Respectfully submitted,

K&L Gates LLP

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Thomas C. Basso  
Reg. No. 46,541  
Customer No. 29175  
Phone: (312) 807-4310

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